

Universal Service Fund

Oppose AB 772



WISCONSIN CALLS

Customers for Affordable Local and Long Distance Service

Wisconsin CALLS

- Wisconsin CALLS is a coalition of organizations and companies dedicated to improving service and promoting competition in the delivery of local and long distance telecommunications services. Members include:
 - AARP Wisconsin
 - Citizens Utility Board
 - Wisconsin Independent Businesses, Inc.
 - Wisconsin Association of Accountants, Inc.
 - Wisconsin Retired Educators' Association
 - Wisconsin Alzheimers Association
 - Wisconsin Apartment Association
 - TDS Metrocom
 - Time Warner Telecom
 - Covad Communications Group
 - McLeodUSA
 - Northern Telephone & Data



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Universal Service Fund

- Established by 1993 Wisconsin Act 496
- Purpose: to ensure that all state residents receive essential telecommunication services and have access to advanced telecommunication capabilities.



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PSC-Directed USF Programs

- High Rate Assistance Credit – partial credit of local telephone rates
- Telecommunications Equipment Purchase Program – financial assistance for persons with disabilities
- Lifeline – (low income) support for basic local service
- Link-Up America – (low income) waives certain charges associated with establishing or moving telephone service.
- Rate-Shock Mitigation – rate credits for customers to temporarily mitigate the effect of large increases in authorized telephone rates
- Access Program or Project by Nonprofit Groups – funding to nonprofits to facilitate the provision of affordable access to telecommunications and information services
- Medical Telecommunications Equipment – grants to nonprofit medical/health organizations for purchase of telecom equipment
- Public Interest Pay Telephone – payments to telephone companies to make available public pay phone services in specific areas
- Two-Line Voice Carryover – waives charges for a second telephone line used by hearing-impaired customers for teletype service



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Non-PSC-Directed USF Programs

- TEACH/DOA Program:
 - Educational Telecommunications Access – subsidized access to new data lines for direct Internet access and two-way interactive video links
- DPI Programs:
 - Newsline – funds a contract with the National Federation of the Blind to provide access to audio versions of major national newspapers
 - BadgerLink – funds a contract with vendors that provide statewide access to reference databases of magazines and newspapers through BadgerLink
 - Supplemental Aid to Public Library Systems – funds aid payments to public library systems.
- UW System Program:
 - UW System BadgerNet Access – BadgerNet access support for UW campuses



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Compliance With Federal Law

- A state exemption for wireless carriers from USF assessments is contrary to federal law.

U.S. Code: Title 47, 254(f) – State Authority

"A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State..."



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The Problem

- Demand on USF dollars is growing while revenues are shrinking.
- Exempting one whole class of carriers skews competitive choices
 - Providers that don't pay into the fund will be able to price their products at less cost to the consumer, all other things being equal.



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USF Appropriations

Statute	Statute Title	2001 Act 16		2003 Act 16		2005 Act 25		2007 Act 20	
		2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
20.155 (1)(g)	Universal Telecommunications Service	\$6,880,000	\$6,880,000	\$5,000,000	\$6,000,000	\$6,000,000	\$6,000,000	\$6,000,000	\$6,000,000
20.255 (3)(q)	Periodical and Reference Information Databases; newswire for the blind	\$1,773,500	\$1,850,200	\$1,886,900	\$1,943,500	\$1,992,500	\$2,030,500	\$2,167,700	\$2,219,000
20.255 (3)(qm)	Supplemental Aid to Public Library Systems	--	--	\$2,111,900	\$2,111,900	\$4,223,800	\$4,223,800	\$14,040,600	\$5,486,100
20.275 (1)(g)	Computer Training	\$175,000	\$175,000	--	--	--	--	--	--
20.285 (1)(q)	UW Telecommunications Services	\$1,054,800	\$1,054,800	\$1,054,800	\$1,054,800	\$1,054,800	\$1,054,800	\$1,054,800	\$1,054,800
20.505 (4)(s)	Telecommunications Access; school districts	\$8,393,300	\$9,613,700	\$10,893,400	\$11,324,200	\$11,330,100	\$11,330,100	\$11,340,700	\$11,340,700
20.505 (4)(t)	Telecommunications Access; private & technical colleges & libraries	\$3,978,000	\$4,670,000	\$4,735,500	\$5,066,000	\$5,066,000	\$5,066,000	\$5,066,000	\$5,066,000
20.505 (4)(tm)	Telecommunications Access; private schools	\$908,100	\$1,340,600	\$708,100	\$701,300	\$701,300	\$701,300	\$701,300	\$701,300
20.505 (4)(tu)	Telecommunications Access; state schools	\$64,900	\$70,000	\$75,000	\$68,200	\$68,200	\$68,200	\$68,200	\$68,200
20.505 (4)(tw)	Telecommunications Access; juvenile correctional facilities*	\$251,100	\$233,400	\$112,500	\$102,300	\$102,300	\$102,300	\$102,300	\$102,300
	TOTALS	\$23,478,700	\$25,887,700	\$26,578,100	\$28,372,200	\$30,539,000	\$30,577,000	\$40,541,600	\$32,038,400

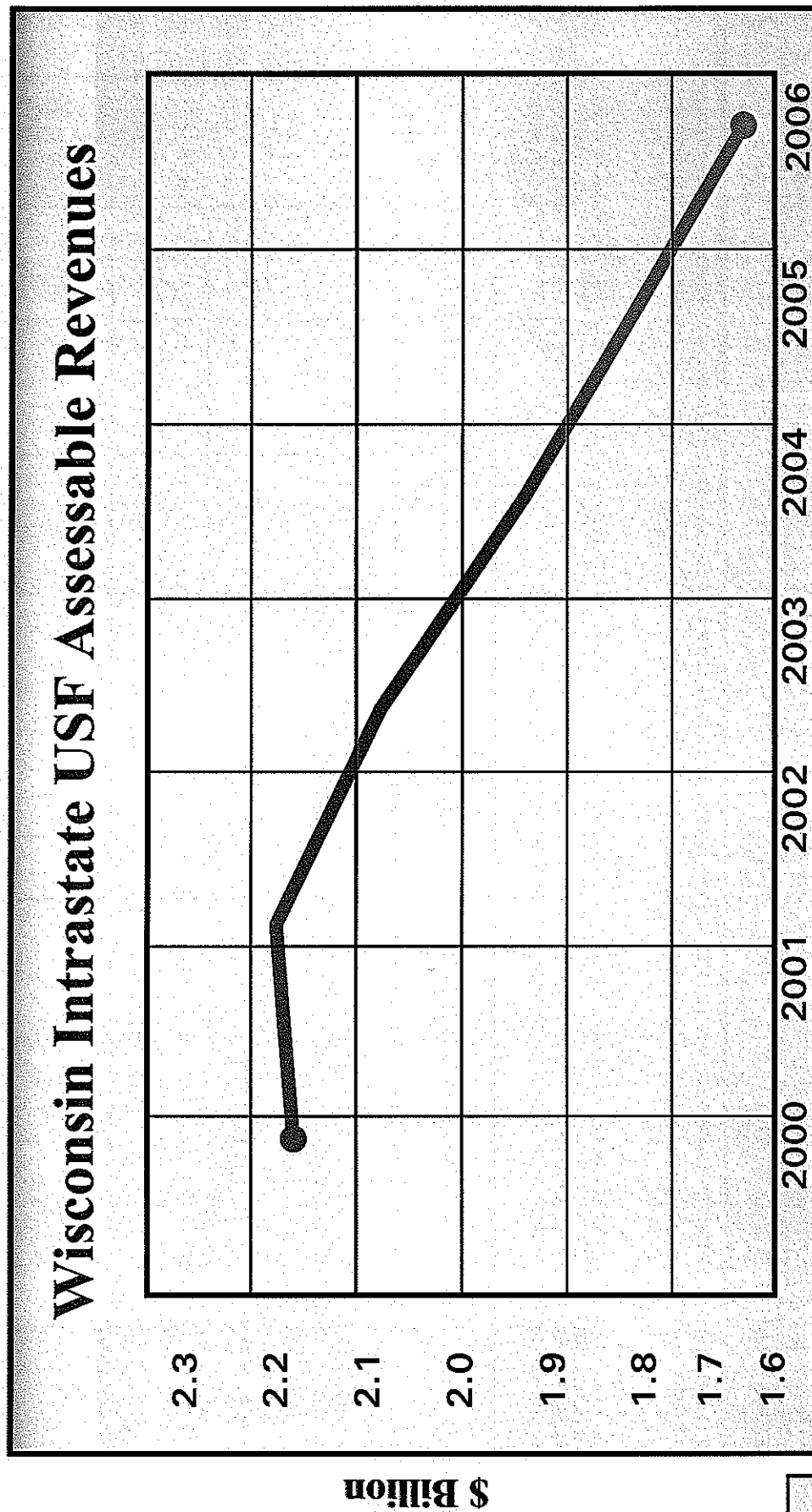
* 20.505 (4)(tw) was previously named Telecommunications Access; secured correctional facilities



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Intrastate Revenues are Falling



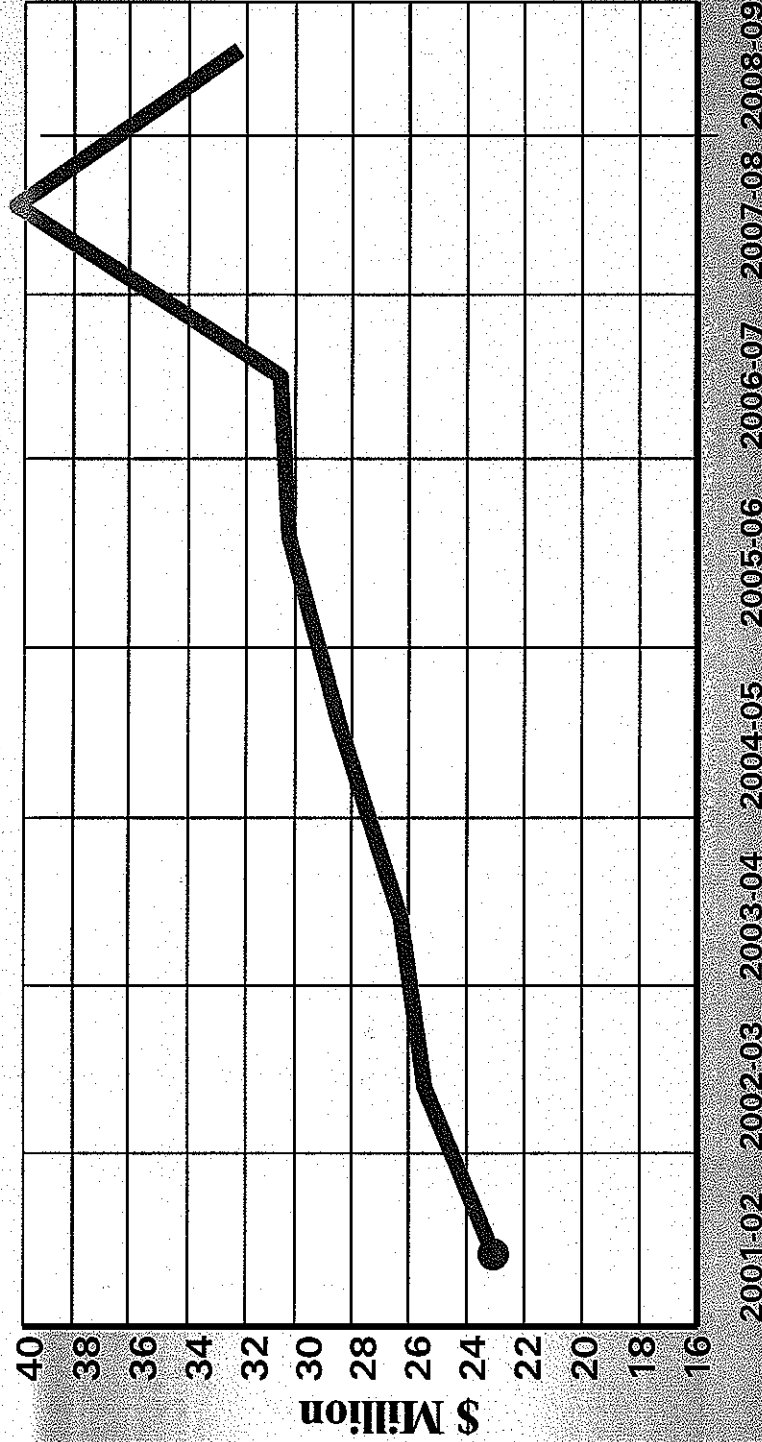
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Source: Public Service Commission of Wisconsin

State USF Assessments Are Growing

Demand On Universal Service Fund Dollars



Budget Years

Sources: 2001 Wisconsin Act 16; 2003 Wisconsin Act 16; 2005 Wisconsin Act 25; Gov's 07-09 Budget



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Who Pays Into USF

- Incumbent Local Exchange Carriers (ILECs)
- Competitive Local Exchange Carriers (CLECs)
- Cable companies that have filed for certification to operate as telecommunications providers



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Who Does Not Pay

- Wireless Providers
- Voice over Internet Protocol (VoIP) Providers



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Solutions

- Wireless carriers should pay into the State USF
 - They pay into the Federal USF
 - The PSC can order them to pay
 - The PSC has already found that wireless is a substitute for basic local exchange service (BLES)

"Wireless customers...are substituting wireless service for residential BLES by 'cutting the cord'....Therefore, it is reasonable and in the public interest to consider wireless service as a substitute for stand-alone BLES."

Public Service Commission of Wisconsin
Docket 6720-TI-196, Final Order, 11/25/2005
Findings of Fact #8

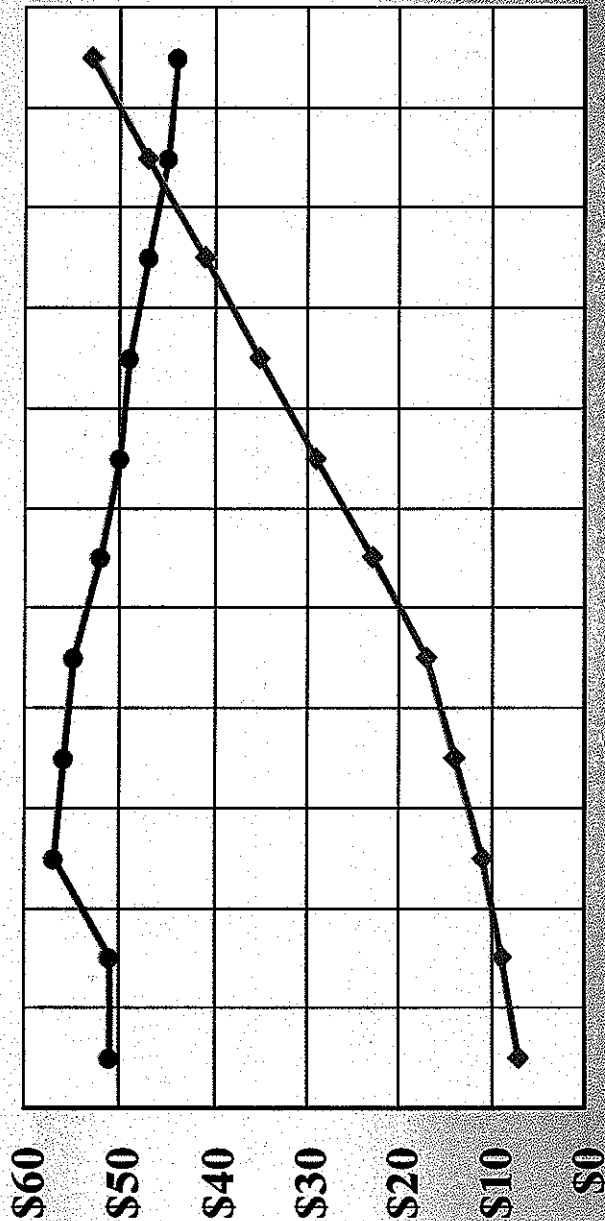


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Wireless vs. Wireline Expenditures

Average Monthly U.S. Household
Telecom Expenditures

—●— Wireline (Local & LD) —◆— Wireless



Source: FCC Trends in Telephone Service as of February 2007

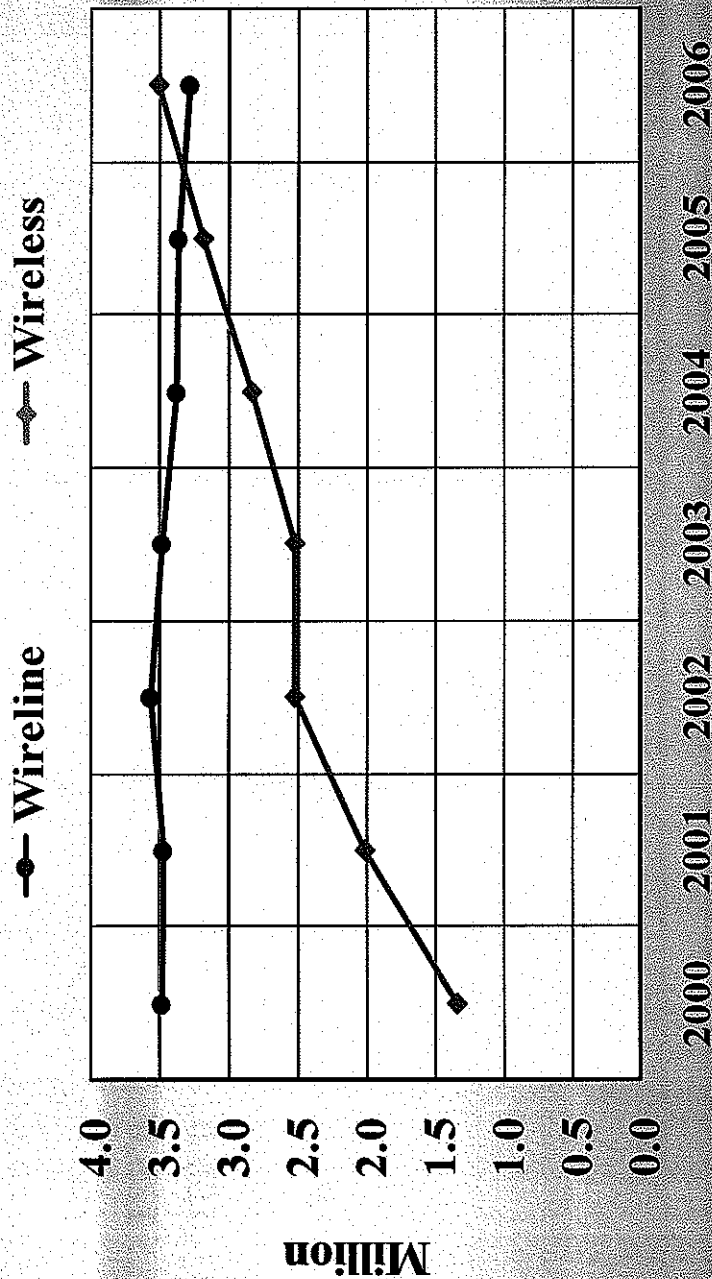
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Wireless vs. Wireline Subscriptions (WI)

Wisconsin Wireline vs. Wireless Subscribers



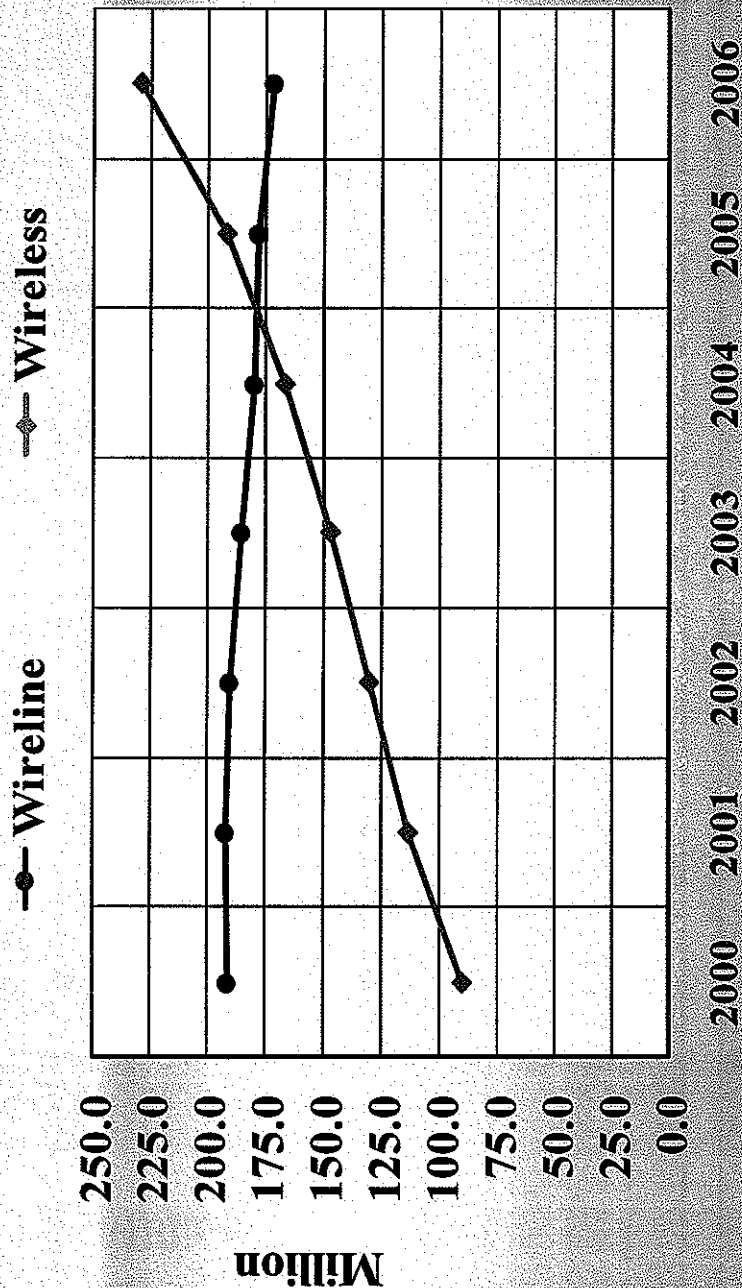
Source: FCC Local Telephone Competition: Status as of June 30, 2006



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Wireless vs. Wireline Subscriptions (U.S.)

U.S. Wireline vs. Wireless Subscribers



Source: FCC Local Telephone Competition: Status as of June 30, 2006



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February 12, 2008

To: The Members of the Assembly Committee on Energy and Utilities

From: Gail Sumi, AARP Wisconsin – 286-6307

Re: Opposition to Exempting Wireless providers from contributing to the USF

AARP Wisconsin requests that you oppose Assembly Bill 772, which exempts wireless carriers from paying into the Universal Service Fund. AARP also opposed a similar provision in the 2007-09 state budget.

The goal of universal service has been to make access to telecommunications and information services available to all Americans at rates that are just, reasonable and affordable. The requirement of affordability means that all consumers should be able to purchase a level of service that meets their daily needs at an affordable price and that no one should have to forgo other necessities, such as medicine and food, in order to use necessary telecommunications services. Moreover this concept recognizes that just and reasonable rates may still be unaffordable for some consumers.

Both the states and the Federal Communications Commission (FCC) are empowered to define “universal service” and create universal service support programs. Establishing the broadest possible base of contributors will help in the long-term sustainability of the Universal Service Fund. A fair and effective approach calls for expansion of the base of contributors to include all providers using the underlying infrastructure, including but not limited to all providers of two-way communications regardless of technology used.

For these reasons, AARP urges policymakers to ensure that universal service is a top priority. Universal services must support consumers’ use of and not just access to emergency services, operator services and directory assistance. All telecommunications carriers, and any other providers that use the Public Switched Telephone Network, should be required to contribute to the universal service fund. Finally, policymakers should ensure that all carriers recover their universal service contributions in a manner that is fair and equitable to all consumers, including low-volume users.

Thank you for your consideration.

Wisconsin Community Action Program Association



To: Members of the Wisconsin Assembly Committee on Energy & Utilities
Representative Phil Montgomery, Chair

From: Richard Schlimm, Executive Director
Wisconsin Community Action Program Association (WISCAP)
& Chair, Wisconsin Universal Service Fund Council

Re: Public Hearing Statement re 2007 Assembly Bill 772

Thank you for the opportunity to address the Committee.

I am Richard Schlimm, Executive Director of the Wisconsin Community Action Program Association and I also appear to speak to you today as Chair of the Universal Service Fund Council. I wish to speak in opposition to Assembly Bill 772.

The Council is designated in statute to advise the Public Service Commission on matters pertaining to Universal Service. The Council is comprised of both consumers and providers of telecommunications in the State of Wisconsin. The USF programs at the Public Service Commission are designed to ensure affordable access to basic telephone service and include the major "safety net" programs of Lifeline, Linkup and the voucher program for the low-income deaf and hard-of-hearing individuals.

The Universal Service Fund Council is on record in favor of including wireless providers in the Universal Service fund and its programs and our position has received support from both consumer and provider representatives on the Council.

First, the inclusion of wireless providers is simply a matter of fairness. The Council embraces the "pay to play" spirit of the legislature—applied when deregulating the industry and first implementing the Universal Service concept and programs in the 1990's. Wireless providers have been exempted for most of the past years because it was thought to be a new and fledgling industry. Certainly, the wireless segment of the industry is thriving and should not be exempt from the Universal Service assessments or the benefits of participation in Universal Service programs.

Secondly, this is a matter of "choice" and need for the low-income or elderly or disabled consumer—all of whom struggle especially today with the high costs and increasing costs of utilities—including telecommunications. The state's most vulnerable citizens should have the choice of access to both wired and wireless basic telephone service in our State. A low-income elderly person may well choose wireless service—which they may take with them when traveling in a car for emergency use. The legislature should retain its "pay to play" approach to Universal Service in Wisconsin and not prohibit choice by Wisconsin's consumers.



Statement of the Wisconsin Energy Commission on Energy & Utilities

Before the Wisconsin Energy Commission
on the 15th day of January, 1974

Present: Mr. James H. ...

Testimony of ...

The Commission is pleased to have the opportunity to present this statement to the Wisconsin Energy Commission. The Commission is a public body created by the Wisconsin Constitution and the Wisconsin Statutes. It is the responsibility of the Commission to ensure that the energy needs of the State are met in a safe, reliable, and economical manner.

The Commission is currently engaged in a study of the energy needs of the State. This study is being conducted in order to determine the most effective way to meet the energy needs of the State. The Commission is also conducting a study of the utility industry in the State. This study is being conducted in order to determine the most effective way to regulate the utility industry.

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PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

February 19, 2008

TO: Gary A. Evenson, Administrator
Telecommunications Division

FROM: Joyce Mahan Dingman, Assistant General Counsel
Office of General Counsel

RE: Is USF Assessment of Wireless Required by Federal Law?

I am replying to your request for a written perspective on the question raised about federal requirements concerning Universal Service Fund (USF) assessment of wireless providers. The question is whether the federal law requires that wireless providers be assessed.¹ As we have previously discussed, I conclude the answer is yes.

At the time that our original USF rules were written, there was an assumption among the states (based on a FCC interpretation) that wireless providers could not be assessed until wireless service became a substitute for landline. The FCC later changed that interpretation and found that states could assess wireless providers for state USFs. The FCC found that state USF assessment of wireless was "other terms and conditions" regulation rather than rate regulation and, so, was allowed under 47 U.S.C. § 332(c)(3). *In the Matter of Pittencrief Communications, Inc.*, 13 FCC Rcd. 1735, FCC 97-343 (released October 2, 1997). The FCC also stated:

26. Moreover, section 254(f) specifically requires that "every telecommunications carrier that provides intrastate telecommunications services shall contribute . . . to the preservation and advancement of universal service" in a state. [FN78] Thus, even if section 332(c)(3) could be read to prohibit states from collecting universal service contributions from CMRS providers, section 254(f) specifically requires universal service contributions from all intrastate telecommunications carriers, which would include CMRS providers. We find that because section 254(f) was enacted later in time and speaks directly to the issue at

¹ Wireless providers are also known as commercial mobile radio service providers (CMRS).

hand, it would take precedence over section 332(c)(3) if the two provisions were found to be inconsistent.

Pittencrief, 13 FCC Rcd. at 1748 (emphasis added). 47 U.S.C. § 254(f), which the FCC referred to in *Pittencrief*, states:

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.

47 U.S.C. § 254(f) (emphasis added). This language and the FCC interpretation of § 332(c)(3) in *Pittencrief* appear to indicate that states must assess wireless. *Pittencrief* was appealed and upheld. *Cellular Telecommunications Industry Association v. FCC*, 168 F.3d 1332 (D.C. Cir., 1999) (*CTIA*). Again, the focus of the case was § 332(c)(3) and whether it prohibited state USF assessments. However, in *CTIA* the court of appeals seemed to interpret § 254(f) as allowing assessment:

The Commission also reasoned that to interpret § 332(c)(3)(A) otherwise would contradict 47 U.S.C. § 254(f), which permits a state to require universal service contributions from every telecommunications carrier providing intrastate telecommunications services in the state. . . .

....

This [254(f)] is strong support for the proposition that, consistent with federal law, states may require contributions of the sort Texas is exacting.

CTIA, 168 F.3d at 1335, 1336 (emphasis added).

In terms of our proposed universal service fund rules the issue is whether, since § 332 does not preempt, does § 254 require the assessment of wireless? This can be a difficult discussion to parse since the first sentence of § 254 undoubtedly grants states the authority to establish USF programs that are not inconsistent with federal law. There the language is

permissive. However, the plain language of the second sentence of the statute appears to be mandatory. Thus, the question is whether states are permitted to establish USF programs and permitted to decide which providers to assess, or permitted to establish programs but, once such programs have been established, required to assess all providers including wireless.

There are no cases directly on point. While there are cases addressing the question of whether wireless may be assessed, there are none specifically addressing whether they must be assessed.

Those arguing that the language is permissive point to the following cases. One of the cases is *AT&T v. Public Utility Commission of Texas*, 373 F.3d 641 (5th Cir. Ct. App. 2004). This case addressed whether Texas' state USF assessment of all intrastate providers on their revenues from intrastate, interstate and international calls originating in Texas violated § 254(f). In describing the dual nature of the state and federal USF systems, the Fifth Circuit Court of Appeals stated that § 254(d) allows the FCC to assess providers of interstate service and § 254(f) allows states to assess providers of intrastate services. The court notes that the federal USF is supported by a fee on all interstate providers, including wireless.

Another such case is *Bell Atlantic Mobile, Inc. v. Department of Public Utility Control*, 754 A.2d 128 (Conn. 2000) (*Bell Atlantic*). In that case the Connecticut Supreme Court considered the question of whether a Connecticut state USF assessment was preempted by federal law (§ 332). The court stated that § 254(f) provides that state programs may require contributions from all providers of intrastate service. This seems to envision programs existing and, arguably, a choice about whether to assess all providers. Thus, it is characterized by some commenters as supporting the view that assessment is permissive. However, the case goes on to

state that there is no language in § 254(f) to suggest that CMRS providers are not included in § 254(f) as they are a subgroup of “every telecommunications carrier.” *Bell Atlantic*, 754 A.2d at 142. Arguably then, *Bell Atlantic* also supports the position that a state can have programs and decide whether to assess, but that once the decision to assess has been made, all providers must be assessed.

Those commenters arguing that the language is mandatory point to the second sentence of § 254(f) and argue that while the section gives states permission to create state USF programs, once that decision has been made, the second sentence requires assessment of all carriers, including wireless. These commenters also rely on the cases discussed below.

Nextel West Corp. v. Indiana Utility Regulatory Commission, 831 N.E.2d 134 (Ind. Ct. App. 2006), addressed the question of whether the Indiana Utility Regulatory Commission had the authority to create a state USF. The Indiana Court of Appeals found that, under state law, it did. In a footnote, the court stated that § 254(f) does not grant Indiana authority to create the state USF (only the state legislature may do so), but provides that if a state does so, the funding mechanisms must comply with FCC rules. It does not specifically state what those rules are, although it does quote § 254(f). Arguably, the court is discussing the first sentence of § 254(f). On the other hand, the court may be saying that the second sentence lays out what the rules are. The court does not clarify.

The strongest support for the “mandatory” argument is found in *Sprint Spectrum, LP v. State Corporate Commission of State of Kansas*, 149 F.3d 1058 (10th Cir. Ct. App. 1998) and *Pittencrief*. In *Pittencrief*, the Texas Commission had imposed an assessment on wireless providers. *Pittencrief* requested that the FCC issue a declaratory ruling that § 332 preempted

states and prohibited such assessments. The FCC affirmed its prior finding that § 332 does not preempt state assessments. Part of the FCC's reasoning was that if the § 332 language was interpreted to preempt state assessment of wireless, it would directly contradict § 254(f). The FCC stated, "[S]ection 254(f) specifically requires universal service contributions from *all* intrastate telecommunications carriers, which would include CMRS providers." *Pittencrief*, 13 FCC Rcd. at 1748. The FCC order was upheld on appeal in *CTIA*, 168 F.3d 1332.

In *Sprint Spectrum*, 149 F.3d 1058, the question was whether state assessment of wireless is preempted, and thus prohibited, under § 332(c)(3)(A). The Tenth Circuit Court of Appeals agreed with the FCC that there is no such preemption. It stated:

Section 254(f) specifically grants states the authority to require contributions for universal service and mandates that the contributions come from all telecommunications carriers. In fact, according to the mandatory language of § 254(f) ("Every telecommunications carrier . . . shall contribute . . ."), the Commission would apparently be in violation of federal law if it established a universal service fund but did not require contributions from wireless providers.

Sprint Spectrum, 149 F.3d at 1062.

In a phone conversation with a staff member of the FCC, I was told that there has been only limited national discussion on this question and that it was the FCC's belief that there was going to be a discussion among various state commissions to resolve the question. Not all states assess wireless providers. For example, a July 2006 study by the National Regulatory Research Institute showed that of the 22 states that have USF high-cost programs, 17 assess wireless and 5 do not.² However, like Wisconsin, this may be the result of not having looked at the issue of whether federal law requires assessment rather than an affirmative decision that it does not.

² *State Universal Service Funding Mechanisms: Results of the NRRI's 2005-2006 Survey*, NRRI, July 2006.

Docket 5-TR-104

Having read the statute and considered all of the court cases, it is my opinion that the plain language of 47 U.S.C. § 254(f) requires assessment of wireless providers once a USF program has been established.

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